STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

-vs- CASE NO. F-911618

SCOTT HEIMSSMANN,

Defendant.

CHARGE: FIRST DEGREE INTENTIONAL HOMICIDE

FIRST DEGREE INTENTIONAL HOMICIDE

December 9, 1991

Proceedings had in a jury trial before the HONORABLE LAURENCE C. GRAM, JR., Br. #13

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MARILYN L. GRAVES,
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OF WISCONSIN

APPEARANCES:

JON RESDIN, ESQ., Assistant District Attorney, appearing on behalf of the State of Wisconsin.

MARTIN KOHLER, ESQ., appearing on behalf of the Defendant.

DEFENDANT PRESENT IN PERSON.

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Whereupon ROBERT FLESSAS, being first duly sworn, was examined and testified as follows:

THE COURT: Please be seated, sir. Would you state your name spelling your last name?

THE WITNESS: Robert Flessas, F-L-E-S-S-A-S.

THE COURT: We better get a District Attorney in here. Mr. Reddin, we just completed the direct examination, you can proceed with your cross examination. Not quite.

MR. REDDIN: Thank you.

THE COURT: However, the witness has identified himself for the record.

MR. REDDIN: I appreciate the opportunity, Your Honor. Thank you.

THE COURT: Go ahead, Mr. Kohler.

MR. KOHLER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. KOHLER:

Q Would you state your name again, please?

A Robert Flessas.

Q And how are you employed, Mr. Flessas?

A I'm an attorney.

Q Are you licensed to practice law in the State of Wisconsin?

A Yes, I am.

Q Are you familiar with Scott Heimermann?

A Yes.

Q Do you see Scott Heimermann here today?

A Yes. He's sitting to your left.

MR. KOHLER: I ask the record to reflect the identification.

THE COURT: So ordered.

MR. KOHLER: Thank you.

Q Have you ever represented Mr. Heimermann prior to April of this year?

A Yes, I did.

Q And when was that if you recall?

A I can't give you a specific date, but it was probably sometime in late March - early April I believe.

Q All right.

MR. REDDIN: I'm sorry, late March early --

A Late March - early April I believe.

Q Of '91?

A '91 yes. This year.

Q Are you in practice with anybody else?

A Yes, I am, with my father, Peter Flessas.

Q Are you aware of whether or not your father had represented Mr. Heimermann prior to 1991?

A In this particular event?

Q No. No. In any particular matter.

A I don't know.

Q Okay. In April of 1981, do you recall having Scott Heimermann contact your office?

A Yes, he did.

Q And do you recall where he called from?

A Scott contacted me from the Brower County Jail in Florida. He contacted my house long distance, collect.

Q All right. And did he advise you of the circumstances?

A Yes, he did.

Q What did he advise you?

A He told me that he was being held in the County Jail in Brower, Florida -- Brower County, Florida, and he was going to be extradited to Milwaukee the next day.

Q And what if anything did you tell him?

A I told Scott that we were available for him to use our services and that he said he did want us to represent him when he came in, and he said that he would be brought into Milwaukee that following day at 1:30 by airlines.

Q And what did you do the following day?

A Well, at the time that I was talking to him on the phone, I advised Scott not to speak to anybody concerning this matter at all. I said that I would meet him when he came into Milwaukee which would be, you know, around 1:30. He said fine, I'll meet you then and

I won't talk to anybody. The next day I went down to the Milwaukee Police Administrative Building and I talked to a Detective Ken Mueler.

Q Lieutenant Mueler?

A Right. I met him right outside of the C.I.B. Bureau, and --

Q Do you recall which floor that was?

A I think it's the fourth floor. I talked to Detective Mueler and I asked him if Scott had arrived yet from Florida, and he told me that he had not. I asked him when he would arrive, and the detective told me that he wasn't really interested in giving me that information at that time, and I asked him why, and there didn't seem to be a good reason.

Well, after more discussion with him, he did indicate to me finally that Scott would be in around 6:30 that same evening, so what I did is I went back to my office. At the end of the day I went home.

I contacted the police again that evening prior to 6:30 and I asked them if Scott had arrived and they said yes, he was in; and I said I'd like to speak to him then because I don't want any police to have any discussions with him at all.

Q And who did you tell this to?

A It was another detective. I think his name was Stolik or

Sucik.

Q Okay.

A He indicated to me that Scott and the detectives were having a good time drinking coffee and that he didn't want to talk to anybody. And I had indicated to him that I did speak with Scott prior to his arrival in Milwaukee, and I told them -- I told him to not say anything until he would speak to me, and Scott agreed with me that he would not say nothing and he would contact me immediately upon his arrival in Milwaukee.

Well, we went around and around with the police. They would not let me talk with him. So what I did is I contacted my father, Peter, and we agreed that we would immediately drive downtown and go directly to the Police Administrative Building. We did, and we [illegible] to another detective. This was around maybe 6:30 on the 4th floor.

A detective came out. I don't recall his name. He told me that Scott was in there, that he did not want to talk to anybody, and I said I can't belisve that because the man is being charged with two counts of intentional homicide and I would find that hard to believe that an individual would not want to speak to an attorney.

At that time we were referred to Captain -- I

believe his name was Furpero, who was in charge -- the detective in charge -- the captain in charge of the police in the evening, and we went in there to the administrative room. We spoke with that detective or -- I'm sorry, that captain, and he gave me the same story.

He said that Scott was talking to the detectives, that he did not want to speak with any attorneys. And again I told him that I found that very hard to believe, and I said: Listen, what I will do is this, if you would let me go and see Scott personally and let me hear that coming from his mouth, that he did not want to talk to an attorney and he did not want to talk to me or my father, then I would be satisfied and I would leave.

He told me I'm not going to do that. He threatened to arrest me and my father, and he said get out of the building. So, because I did not want to be arrested, we left.

And the next day we contacted the police again, asking them if we could see our client. They gave us the run around again. They told us that he doesn't want to talk to any attorneys at all; and finally I got on the phone with a -- well, we asked to talk to another captain in charge, and I believe his name was Captain Purlowitz, contacted us at our office

and told us -- he told me initially the same sorry, that Scott didn't want to talk to any attorneys; and I told him: Look, if Scott doesn't want our services or does not want to speak to an attorney, let me at least hear that from him in person and we'll be satisfied. And he said: Fine, come on down.

So I believe it was about 2:30 that afternoon that we went down to the Police Administrative Building and the captain took us up to the holding cells in the Police Administrative Building, and it was at that time that we did see Scott and we talked to him.

Q And did he retain your services at that point?

A Yes, he did.

Q And you were his lawyer until I substituted in; is that correct?

A That's correct.

MR. KOHLER: I have nothing further.

CROSS EXAMINATION

BY MR. REDDIN:

Q You don't know of your own personal knowledge whether or not the defendant asked for an attorney while he was being questioned in the Milwaukee Police Department on April 22nd; is that correct?

A I don't know that, no.

Q And you don't know of your own knowledge whether he told

the police when he was in Plantation, Florida, on the 18th of April of 1991 -- you don't know whether he told them that he didn't want an attorney; is that correct?

A I didn't hear anybody say that besides Mr. Heimermann telling me that.

Q Did Mr. Heimermann tell you that while he was being interrogated -- you weren't present?

A I wasn't present during the interrogation, no.

Q So you don't know what he told the police at that time?

A No. I wasn't there.

Q And when you talked to the Milwaukee Police officers up until the 23rd of April, you were told uniformly that the defendant had indicated he did not want to talk to you or your father; is that right?

A That's right.

MR. REDDIN: That's all.

Q Well, and you have no way of knowing of your own personal knowledge whether he told the police that or not?

A Well, I know that when I met with him in the jail -- in the Milwaukee City Jail, that he told me he never said that to the police.

Q I'm asking you of your own personal knowledge whether or not -- the times he was being talked to by the police, you have no independent knowledge of what he said at

that time, right?

A No, I don't, because I wasn't there.

MR. REDDIN: That's all.

RE-DIRECT EXAMINATION

BY MR. KOHLER:

Q Did you ever make a phone call where you were -- to the Milwaukee Police Department when Scott was first brought in from Florida, did you ever make a phone call where you were under the impression that Scott was sitting right next to or in the vicinity of the police officer/detective, that you were talking to?

A There was one point I believe where I was talking to somebody in that Criminal Investigation Bureau, in that room.

Q But you didn't -- did you know where Scott was other than being in the general area there?

A I knew that he was in that room on the 4th floor, the Criminal Investigation Bureau. I knew that. That was my understanding at the time.

Q But were you given the impression that he was sitting right next to the detective that you were talking to?

MR. REDDIN: Objection as to what his impression was unless he knows for sure.

THE COURT: Sustained.

MR. KOHLER: I have nothing further.

MR. REDDIN: Nothing further.

THE COURT: You may step down, sir. Thank you.

MR. KOHLER: Do you have your father?

THE WITNESS: Yes.

MR. KOHLER: Thank you.

Whereupon PETER FLESSAS, being first duly sworn, was examined and testified as follows:

THE COURT: Please be seated. Sir, would you state your name, spelling your last name, please?

THE WITNESS: My name is Peter N. Flessas. F-L-E-S-S-A-S like in sugar.

DIRECT EXAMINATION

BY MR. KOHLER:

Q Mr. Flessas, how long have you been an attorney in the State of Wisconsin?

A Since June 10, 1954.

Q And did there come a time prior to March or April of 1991 that you knew and/or represented Scott Heimermann?

A Yes.

Q And how far back did your dealings with Mr. Heimermann go?

A I think I've known him for approximately four years -- five years prior to the time you're indicating.

Q Okay. And had you represented him during that time?

Q Then what happened?

A Well, we told them we knew that Scott would be arriving at approximately 1:30 p.m. because he had informed the office that that's the time the plane would arrive, and we were told that the plane had not arrived, there was some reason for the delay, and that he would probably be coming in later that day -- that evening.

I think we went down there again that evening and again were told he didn't want to see us. We asked could you bring him out so he could tell us that and they told us they would. We said we want to hear it from him. He said you're not going to talk to him.

Q Did you make any phone attempts around 5:30 that evening to talk to Scott?

A I don't recall that we did, but I recall then attempting to see a higher-up.

Q And did you?

A Yes. We went up and I told the clerk, you know, we wanted to complain about the fact that the Police Department was holding Scott Heimermann more or less incommunicado, and a man came out with his jacket off, identified himself as Captain Pirpero, and he said: What's the problem?

And I identified myself and my son, and I said: We want to see Scott Heimermann. We understand

he's been brought back. And he said: He doesn't want to see you. I said: You bring him out and let him tell us that. He said: I'm not going to bring him out. I said: Do you know you're violating the section of the Wisconsin Statutes that prohibits the prevention of a person seeking to talk to his counsel? And he said: If you don't get out of here, and your son -- he said -- I'm going to charge both of you with disorderly conduct. I said: Who do you think you're talking to? I never heard this in thirty-seven years of practice. And he said: Get out of here.

And I've never heard a comment like that from a Milwaukee police officer. And I wrote to Arreola and complained about it, and he sent Captain Don Demagolski to my office to investigate. I told him what happened and he said he would file a report.

MR. KOHLER: I have nothing further. Thank you.

CROSS EXAMINATION

BY MR. REDDIN:

Q To your knowledge nobody was disciplined as a result of that investigation?

A I received no further communication from the Police Department or anyone else.

Q Mr. Flessas, you were told by several Milwaukee Police

officers that the defendant did not want to talk to you;
is that correct?

A That is correct.

Q And you -- since you were not present and did not talk
to the defendant on that date, you have no way of
knowing whether that's true or not, isn't that correct,
of your own personal knowledge?

A I formed the opinion that it was not correct because --

Q I understand. But the question is, of your own personal
knowledge, did you ever hear the defendant say that he
did want to talk to you on that day?

A It would be physically impossible if he wouldn't allow
me to speak to him. I asked him bring the man out. If
he tells me that I'll be on my way.

Q And he told you he wasn't going to do that?

A That's correct.

Q But -- so you have no personal knowledge as to whether
he gave up his right to have you represent him or not at
that point; correct?

A I doubt that.

Q That's not the question. The question is, you have no
personal knowledge of that. Is that correct or not
correct?

A Are you asking me whether or changes his mind after we
called the police?

Q No, I'm asking you if of your own -- there's been testimony today that he told several police officers that he did not want to talk to you on April 22, 1991; and I'm asking you of your own personal knowledge, do you know -- you cannot say that that's not true, can you?

A I think I'd have to answer I can't say that because he wouldn't be allowed to talk to me.

Q All right. And you said that you had become aware that the defendant had contacted your law firm for representation earlier than that; is that correct?

A Yes.

Q And did you talk to him at that time?

A No.

Q So the only way you became aware of that is through your son?

A That's correct.

MR. REDDIN: That's all.

MR. KOHLER: No redirect, Your Honor.

THE COURT: You may step down, sir. Thank you.

MR. KOHLER: Thank you Mr. Flessas. We have no further witnesses, Your Honor.

MR. REDDIN: State calls Dennis Murphy.

Whereupon DENNIS MURPHY, having been